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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GRAVON STUBBS,

Defendant and Appellant.

B292086

(Los Angeles County
Super. Ct. No. BA445850)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Craig J. Mitchell, Judge. Affirmed.

Law Offices of James Koester and James Koester, under
appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Yun K. Lee and Thomas C. Hsieh, Deputy
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Gravon Demon Stubbs (defendant) appeals from the judgment entered in accordance with a plea agreement. He contends that one term in the plea agreement resulted in an unauthorized sentence and must be stricken. We conclude that since the plea agreement called for a specific sentence, defendant is estopped from challenging it on appeal. We affirm the judgment.

BACKGROUND

A second amended information charged defendant with four felony counts, as follows: attempted murder, in violation of Penal Code¹ sections 187, subdivision (a), and 664 (count 1); possession of a firearm by a felon, in violation of section 29800, subdivision (a)(1) (count 2); unlawful possession of a large-capacity magazine, in violation of section 32310, subdivision (a) (count 3); and assault with a semiautomatic firearm, in violation of section 245, subdivision (b) (count 4). The information also alleged that defendant personally and intentionally discharged a firearm causing great bodily injury, within the meaning of section 12022.53, subdivisions (b),(c), and (d); that defendant personally inflicted great bodily injury on the victim within the meaning of section 12022.7, subdivision (a); that the crimes were committed for the benefit of, at the direction of, and in association with a criminal street gang, with the specific intent to promote, further and assist in criminal conduct by gang members, within the meaning of section 186.22, subdivision (b)(1)(A); and that defendant personally used a firearm, within the meaning of section 12022.5.

On August 1, 2018, the parties informed the trial court that they had come to an agreed upon disposition on the following terms: a plea to count 4, section 245, subdivision (b), for the high term of nine years. The defendant would admit the great bodily injury allegation under section 12022.7, for an additional three

¹ All further statutory references are to the Penal Code unless otherwise indicated.

years. The section 12022.5 gun allegation would be stayed, for a total term of 12 years in state prison.

After hearing the terms from the prosecutor, the trial court asked defense counsel whether that was her understanding of the disposition, to which she replied, "That is my understanding." The trial court then informed defendant of his jury trial rights, immigration and other consequences of his plea, asked defendant whether anyone had threatened or forced him to enter the plea against his will and whether he had sufficient time to speak to his counsel. Defendant acknowledged an understanding of his rights and then waived them. Defendant then entered a plea of no contest to count 4, and admitted both the allegation that he personally inflicted great bodily injury and that he personally used a firearm. The trial court sentenced defendant to prison for the agreed upon term of 12 years, composed of the high term of nine years as to count 4 and three years for the great bodily injury enhancement alleged under section 12022.7. The court also imposed and stayed a four-year enhancement for personal use of a firearm pursuant to section 12022.5. Defendant did not object to the sentence. He filed a timely notice of appeal claiming the appeal was based on the sentence or other matters occurring after his plea and did not affect the validity of his plea.

DISCUSSION

Defendant's sole contention on appeal is that the trial court was not authorized to impose and stay the four-year term for the firearm enhancement, and that instead the court should have stricken the enhancement. His opening brief is devoted to arguing that at the time of his sentencing, a firearm enhancement under section 12022.5, could not lawfully be imposed and stayed, but was required to be executed or stricken. We need not resolve that question as we agree with respondent that defendant is estopped from challenging what was a negotiated part of his plea agreement.

"The rule that defendants may challenge an unauthorized sentence on appeal even if they failed to object below is itself subject to an exception: Where the defendants have pleaded

guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction.² The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process. [Citations.]” (*People v. Hester* (2000) 22 Cal.4th 290, 295 (*Hester*).)

In reply, defendant contends that *Hester* is inapplicable here, because there is no issue of multiple punishment prohibited by section 654, whereas the issue before the California Supreme Court in *Hester* was whether defendant could agree as part of a plea bargain to a concurrent term that the trial court would otherwise be required to stay pursuant to section 654. Defendant’s reading of *Hester* is too narrow. The court merely applied well established precedent to the facts of that case. (*Hester, supra*, 22 Cal.4th at p. 295, citing, inter alia, *People v. Couch* (1996) 48 Cal.App.4th 1053, 1057 [“The fact that a defendant has received a benefit in return for agreeing to accept a specified sentence is itself sufficient to estop that defendant from later seeking to unfairly supplement this benefit by mounting an appellate attack on the trial court’s imposition of the specific sentence which the defendant agreed to accept”]; *In re Griffin* (1967) 67 Cal.2d 343, 347 [“a party who seeks or consents to action beyond the court’s power as defined by statute or decisional rule may be estopped to complain of the ensuing action in excess of jurisdiction”].)

Defendant also argues that the most important part of the bargain was the 12-year term, and his agreement to the stayed enhancement was not a material term. Therefore, defendant

² A court with jurisdiction over the parties and the subject matter has fundamental jurisdiction. (See *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 288.) Defendant does not assert a lack of fundamental jurisdiction.

claims he is not attempting to better his bargain through the appellate process. Defendant's argument is unavailing. A plea agreement is a contract between the accused and the prosecutor, both parties are bound by its terms, and both the defendant *and the People* are entitled to the benefit of the bargain. (*In re Ricardo C.* (2013) 220 Cal.App.4th 688, 698.)

Finally, defendant argues that the final sentence of California Rules of Court, rule 4.412(a) relating to "Defendant's agreement as reason" is "troubling" in this case. That rule states:

"It is an adequate reason for a sentence or other disposition that the defendant, personally and by counsel, has expressed agreement that it be imposed and the prosecuting attorney has not expressed an objection to it. The agreement and lack of objection must be recited on the record. *This section does not authorize a sentence that is not otherwise authorized by law.*" (Italics added.)

Defendant appears to suggest that the last sentence of the rule has abrogated all the long-standing rules regarding estoppel. However, the Advisory Committee comment to rule 4.412 provides that subdivision (a) "is intended to relieve the court of an obligation to give reasons if the sentence or other disposition is one that the defendant has accepted and to which the prosecutor expresses no objection." Making clear that the rule applies when the court is required to give reasons for a sentencing choice. It has nothing to do with the estoppel issue presented here.

In sum, defendant may not complain on appeal about a term in his agreed upon disposition, and may not deprive the prosecution of the benefit of the bargain.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT